

M e m o r a n d u m**490.0460**

To: Mr. Michael Kitchen
Audit Review & Refund Unit (MH)

July 31, 1990

From: John Abbott
Senior Tax Counsel

Subject: S--- M--- -- SR -- XX-XXXXXX
Lemon Law – claim for refund on leased vehicle

In your memo to Legal, which we received April 25, 1990, you relate that a motor vehicle manufacturer, S--- M---, has claimed a refund of use tax which was remitted to the Board by a lessor, W--- F--- B---. S--- M--- repurchased a defective vehicle from W--- F--- B--- pursuant to the California Lemon Law. The Refund's Unit's position is that the claim should be denied. The tax remitted with respect to the lease was use tax, not sales tax. Section 6202 imposes this tax with respect to any use of the tangible personal property. Until the lease has been cancelled, a use of the property occurs. Accordingly, no refund of use tax paid on a lease prior to its termination should be allowed. The correspondence in S--- M---' file indicates the lease in question is between W--- F--- B--- and the lessee, L--- F---.

Opinion

Our opinion is that S--- M--- is not entitled to a refund of the use tax paid on the lease between W--- F--- B--- and L--- F---. Civil Code Section 1793.25 was added by Chapter 1280, Statutes 1987, to require the Board to reimburse a motor vehicle manufacturer for sales tax which the manufacturer includes in making restitution to a buyer under Civil Code Section 1793.2 (the California Lemon Law), if the retailer of the motor vehicle paid the sales tax on the sale of that motor vehicle to the buyer. Since this section applies only to refunds of sales tax, we agree with the Refunds Unit's contention that the manufacturer is not entitled to claim a refund of the use tax, even if the manufacturer has reimbursed the lessor for use tax paid.

However, we do not agree with the Refunds Unit's position that no refund at all is permitted. In our view, either W--- F--- B--- or Mr. F--- could file a valid claim for refund under Regulation 1655(b), Defective Merchandise. That paragraph states in part, "Amounts credited or refunded by sellers to consumers on account of defects in merchandise sold may be excluded

from the amount on which tax is computed.” This provision is not limited to sales only, and includes leases which are taxed as continuing sales. Even though the lessee, Mr. F---, did use the defective motor vehicle, if he obtained a full refund of the amounts he paid as rental for the vehicle, there was no consideration paid for that use, and therefore there was no “purchase” within the meaning of Revenue and Taxation Code Section 6010(a) or (e).

JA:jb